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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

DILAN L. DUNN,

PLAINTIFF-APPELLEE

V.

J. CASTRO, ET AL.,

DEFENDANTS-APPELLANT.)

CASE NO. 08-15957

U.S. DC NO. 1:06-CN-00088

AWE-PLB-P

PLAINTIFF-APPELLEE

ANSWERING BRIEF.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT
OF CALIFORNIA.

DILAN L. DUNN #H-93331

KVS-P/A-2#128

P.O. BOX-5101

DELANO, CA. 93216-5101

(IN PRO-PER)

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V.

1 INTRODUCTION AND SUMMARY ARGUMENT.

2
3 I, DYLAN L. DUNN, PLAINTIFF - APPELLEE, AM A STATE
4 PRISONER PROCEEDING IN PRO-SE AND IN FORMA
5 PAUPERIS. RESPECTFULLY COMES BEFORE THIS MOST
6 HONORABLE UNITED STATES COURT OF APPEAL, FOR THE
7 NINTH CIRCVIT. TO DEFEND AND ANSWER, MY CLAIM FOR
8 INJUNCTIVE RELIEF, DAMAGES, AND DEMAND FOR A JURY
9 TRIAL, PURSUANT TO 42 U.S.C § 1983. IN WHICH THE
10 DEFENDANTS-APPELLANTS; J. CASTRO, P. STOCKMAN, D. ORTIZ,
11 V. YAMAMOTO, A.K. SCRIBNER, AND T. SURGES. PRISON
12 ADMINISTRATORS (J. CASTRO ET. AL.). VIOLATED MY
13 SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS
14 UNDER THE UNITED STATES CONSTITUTION FOURTEENTH
15 AMENDMENT. BY PERSONS ACTING UNDER 'COLOR OF
16 STATE LAW', DURING AN INSTITUTIONAL CLASSIFI-
17 CATION COMMITTEE (I.C.C) REVIEW AND SUBSE-
18 QUENT ADMINISTRATIVE APPEAL. IN WHICH THE
19 DEFENDANTS PLACED AND UPHELD A "TOTAL BAN"
20 PERMANENTLY RESTRICTING ME FROM VISITING
21 WITH MY CHILDREN, (ALL MINORS). AND THEREBY
22 EXCEEDING THE NORMAL HARDSHIPS ASSOCIATED
23 WITH INCARCERATION. (CR. 1, AER 34-50.).

24 IN THIS INSTANCE THE DEFENDANTS CHOSE TO
25 DENY ME VISITATION WITH MY MINOR CHILDREN,
26 BASED ON AND IN ACCORDANCE TO A (C.D.C) CALIFORNIA
27 DEPARTMENT OF CORRECTIONS PRETEXT INSTITUTED IN
28 THE CALIFORNIA CODE OF REGULATIONS, TITLE 15 (CCR

1 (15) SECTION 3173.1 VISITING RESTRICTIONS WITH
2 MINORS, (FOR THE RECORD, THIS REGULATION HAS BEEN
3 REPEALED AND AMENDED AS OF 5/2006). (SEE EXHIBIT "A")
4 THE DEFENDANTS BASED THIS "TOTAL BAN" VISITING
5 RESTRICTION SOLELY ON A 2002 PHONE CALL, IN WHICH I
6 RECEIVED A DISCIPLINARY RULE VIOLATION REPORT (C.D.C.
7 115). FOR "ATTEMPTING TO ELICIT ILLEGAL SEXUAL
8 RELATIONS 'BY PHONE' IN CONCERT WITH A MINOR."
9 (BASICALLY PHONE SEX WITH MY WIFE WHILE MY SON WAS
10 ON THE OTHER LINE, UNBEKNOWNST.) (CR 1. AER 34-50)
11 I APPEALED THE DEFENDANTS DECISION TO IMPOSE
12 AND UPHOLD THE VISITING RESTRICTION PERMANENTLY
13 BANNING ME VISITATION WITH MY CHILDREN, THROUGH
14 THE INMATE APPEAL SYSTEM, AND WAS "GRANTED" A
15 REVERSAL AFTER IT WAS DETERMINED THAT I DID NOT
16 ACTUALLY MEET THE REGULATIONS CRITERIA. AFTER BEING
17 DELAYED AN EXTENDED PERIOD OF TIME, I FINALLY
18 PROCEEDED TO EXHAUST ALL MY AVAILABLE ADMINISTR-
19 ATIVE APPEAL REMEDIES AT THE C.D.C. LEVEL. (CR 1.
20 AER, 35-36).

21 AFTER CONSIDERING THE IRREPARABLE DAMAGES, I
22 THEN FILED SUIT IN THE U.S. DISTRICT COURT FOR THE
23 EASTERN DISTRICT OF CALIFORNIA. WHERE I WAS BLESSED
24 WITH THE HONORABLE, U.S. MAGISTRATE JUDGE, DENNIS
25 L. BECK, PRESIDING. HE THEREBY ORDERED THE REMA-
26 INING DEFENDANTS SERVED ON DEC. 28, 2006. UPON
27 THE COURTS PRELIMINARY SCREENING, THAT PER NOTICE
PLEADING STANDARDS, I STATED A COGNIZABLE CLAIM

1 FOR RELIEF, FOR VIOLATION OF DUE PROCESS, (AEP. 31, 33).

2 THE DEFENDANTS THEN MOVED TO DISMISS, UNDER
3 RULE 12(b)(6) MOTION TO DISMISS, ON GROUNDS THAT

4 (1.) THE COMPLAINT FAILS TO STATE A COGNIZABLE CLAIM
5 FOR DUE PROCESS. (A) IT FAILS TO ALLEGE A SUBSTANTIVE
6 DUE PROCESS CLAIM. (B) IT FAILS TO STATE A CLAIM THAT
7 DEFENDANTS VIOLATED PROCEDURAL DUE PROCESS.

8 (2.) QUALIFIED IMMUNITY PROTECTS DEFENDANTS FROM
9 POTENTIAL DAMAGES AND LIABILITY. (3.) THE CLAIM
10 AGAINST DEFENDANT T. SURGES SHOULD BE DISMISSED
11 BECAUSE HE FAILS TO SHOW ANY PERSONAL INVOLVEMENT
12 IN THE VISITING RESTRICTION. (LP 21).

13 ON MARCH 21, 2008, THE U.S. DISTRICT COURT FOR
14 THE EASTERN DISTRICT OF CALIFORNIA, THROUGH THE
15 HONORABLE U.S. MAGISTRATE JUDGE, DENNIS L. BECK,
16 DENIED THE DEFENDANTS RULE 12(b)(6) MOTION TO DISMISS.

17 IN HIS FINDINGS AND RECOMMENDATIONS, HE
18 STATED THAT THE COMPLAINT STATED A COGNIZABLE
19 CLAIM FOR RELIEF ON VIOLATION OF DUE PROCESS AND
20 STATES FACTS SUFFICIENT FOR A CLAIM OF DUE PROCESS.

21 (2) THE DEFENDANTS ARE NOT ENTITLED TO QUALIFIED
22 IMMUNITY, BECAUSE I HAVE A CLEARLY ESTABLISHED
23 LIBERTY INTEREST IN THE RELATIONSHIP WITH MY
24 CHILDREN, THAT CANNOT BE INFRINGED UPON BY THE
25 STATE, WITHOUT DUE PROCESS OF LAW. ALSO WHEN
26 THE DEFENDANTS "BANNED" MY VISITATION, THE RIGHT
27 WAS CLEARLY ESTABLISHED ALREADY FOR ABOUT 20
YEARS BEFORE, AND THEN FINALLY A RULE 12(b)(6)

1 IS NOT THE PROPER VEHICLE FOR A FACT FINDING
2 DETERMINATION, TO ADDRESS THIS CLAIM. (AER, 26-31)
3 THE HONORABLE U.S. DISTRICT COURT JUDGE,
4 ANTHONY W. ISHII, REITERATED IT AGAIN IN HIS
5 ORDER ADOPTING THE FINDING AND RECOMMENDA-
6 TIONS, AND DENYING THE MOTION TO DISMISS. HE
7 EVEN TOUCHED ON THE HEART OF THIS CLAIM WHEN
8 HE EXPRESSED THAT THE COMPLAINT ISN'T CONTESTING
9 THE GENERAL VISITING RESTRICTION, BUT RATHER
10 THE FACT THAT I'VE BEEN PROHIBITED FROM VISITING
11 WITH MY CHILDREN. AND THAT INABILITY, WITHOUT
12 DUE PROCESS OF LAW, IMPLICATES THE FUNDAMENTAL
13 INTEREST A PARENT HAS IN MAINTAINING A RELATION-
14 SHIP WITH MY CHILDREN. THIS IS TRULY THE HEART
15 AND SOUL OF MY CLAIM AND WHAT I'VE BEEN TRYING
16 TO MAINTAIN FROM THE BEGINNING. JUDGE ANTHONY
17 W. ISHII, ALSO WENT ON TO STATE, THAT IT WOULD
18 BE IMPROPER AT THIS STAGE TO DEFINE DISPUTED
19 FACTS AND DISPOSE OF UNMERITORIOUS CLAIMS... AND
20 THAT THIS CASE CANNOT BE RESOLVED WITHOUT TURNING
21 TO THE FACTS OUTSIDE THE PLEADINGS. (CR. 40-42. AER.
22 22-25.).

23 THE DEFENDANTS CURRENT APPEAL BEFORE THIS
24 COURT ~~IS~~ SHOULD BE DENIED, AND MADE TO ANSWER
25 THE DISPUTED FACTS, THEY CLAIM I HAVE NOT ALLEDGED.
26 I CLEARLY POINT OUT THE CLAIM OF INTEREST IN MY
27 THREE MINOR CHILDREN, THUS DEFINING A LIBERTY
28 INTEREST IN MAINTAINING MY PARENTAL RIGHTS.

AMENDMENT.

I.) ANSWER AND ASSERTIONS ON CLAIM OF DUE PROCESS AND LIBERTY INTEREST.

THE UNITED STATES DISTRICT COURT, FOR THE EASTERN DISTRICT OF CALIFORNIA, DECISION TO DENY THE APPELLANT-DEFENDANTS MOTION TO DISMISS, SHOULD STAND. BECAUSE THEY RECOGNIZED THE TRUE BASIS OF THIS CLAIM, AND GOT RIGHT TO THE HEART OF THIS MATTER, WHEN IT STATED IN ITS ORDER DENYING THE MOTION TO DISMISS... "IT IS A WELL ESTABLISHED FACT THAT A 'PARENT HAS A FUNDAMENTAL LIBERTY INTEREST' IN 'THE COMPANIONSHIP AND SOCIETY OF HIS OR HER CHILD' AND THAT 'THE STATES INTERFERENCE WITH THAT LIBERTY INTEREST WITHOUT DUE PROCESS OF LAW IS REMEDIABLE UNDER 42 U.S.C § 1983.'" QUOTING *KELSON V. CITY OF SPRINGFIELD* 767 F.2d 651, 654-55 (9th Cir. 1985) (CITING *SANTOSKY V. KRAMER* 455 U.S. 745, 753 (1982)). THE DEFENDANTS PERMANENT BAN ON VISITING WITH MINORS, UNDER CCP. 15 § 3173.1 IN-EFFECT DEPRIVED ME OF MY PARENTAL RIGHTS WITHOUT DUE PROCESS OF LAW.

THE FOURTEENTH AMENDMENT PROVIDES THAT NO STATE SHALL "DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW." *WASHINGTON V. GLUCKSBERG*, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997) THE CLAUSE "GUARANTEES MORE

1 THAN FAIR PROCESS," IT ALSO INCLUDES A SUBSTANTIVE
2 COMPONENT THAT "PROVIDES HEIGHTENED PROTECTION
3 AGAINST GOVERNMENT INTERFERENCE WITH CERTAIN
4 FUNDAMENTAL RIGHTS AND LIBERTY INTERESTS."
5 ID. AT 720, 117 S. CT. 2258," SEE ALSO *RENO V. FLORES*,
6 507 U.S. 292, 301-302, 113 S. CT. 1439, 123 L. ED. 2d 1 (1993)
7 THE LIBERTY INTEREST AT ISSUE IN THIS CASE...
8 "THE CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN...
9 IS PERHAPS THE OLDEST OF THE FUNDAMENTAL LIBERTY
10 INTERESTS RECOGNIZED BY THE U.S. SUPREME COURT.
11 MORE THAN 80 YEARS AGO," IN *MEYER V. NEBRASKA*,
12 262 U.S. 390, 399, 401, 43 S. CT. 625, 67 L. ED. 1042 (1923)
13 SINCE *MEYER* THERE HAVE BEEN A NUMBER OF CASES
14 BEFORE THE COURTS DEALING WITH THE LIBERTY
15 INTERESTS PARENTS HOLD IN COMPANIONSHIP WITH
16 THEIR CHILDREN. GOING BACK TO *SANTOSKY V. KRAMER*,
17 THE COURT ADDRESSED THE FACT THAT A PARENT MAY BE
18 LESS THAN A POSITIVE INFLUENCE ON THE FAMILY
19 DOES NOT ABROGATE THESE INTERESTS. THUS, WHEN
20 A STATE MOVES TO ALTER WEAKEND FAMILY BONDS,
21 IT MUST PROVIDE FUNDAMENTALLY FAIR PROCEDURES."
22 ID. AT 753-754. SEE ALSO, *LASSITER V. DEPT. OF*
23 *SOCIAL SERVICES*, 452 U.S. 18 101 S. CT. 7153, 68 L. ED.
24 2d 640 (1981) WHERE THE COURT POINTED OUT THAT "THE
25 FUNDAMENTAL LIBERTY INTEREST OF NATURAL PARENTS
26 IN THE CARE, CUSTODY, AND MANAGEMENT OF THEIR
27 OF THEIR CHILDREN DOES NOT EVAPORATE SIMPLY
28 BECAUSE THEY HAVE NOT BEEN MODEL PARENTS."

1 INDEED, IT IS "PLAIN BEYOND THE NEED FOR
2 MULTIPLE CITATION' THAT A NATURAL PARENT'S
3 DESIRE FOR AND RIGHT TO THE COMPANIONSHIP,
4 CARE, CUSTODY, AND MANAGEMENT OF HIS OR HER
5 CHILDREN' IS AN INTEREST FAR MORE PRECIOUS
6 THAN ANY PROPERTY RIGHT." (QUOTING LASSITER)

7 HERE THE APPELLANT-DEFENDANTS ARGUE THAT
8 BECAUSE I'M IN PRISON, THAT MY RIGHT TO A
9 PROTECTED LIBERTY INTEREST IN THE COMPANION-
10 SHIP OF MY CHILDREN DOES NOT APPLY UNLESS THE
11 STATES ACTIONS "AFFECT THE SENTENCE IN AN
12 UNEXPECTED MANNER," OR IMPOSE AN "ATYPICAL AND
13 SIGNIFICANT HARDSHIP ON THE INMATE IN
14 RELATION TO ORDINARY INCIDENTS OF PRISON
15 LIFE." (QUOTING SANDIN V. CONNER, 515 U.S. 472, 483-
16 84 (1995)). ONCE AGAIN THE DISTRICT COURT
17 RECOGNIZED THE TRUE "NATURE" OF THE DEFENDANTS
18 "TOTAL BAN" VISITING RESTRICTION WITH MINORS
19 UNDER C.F.R. 15.3173.1. WHEN THEY DENIED THEIR
20 MOTION TO DISMISS. NOT ONLY DID THE DEFENDANTS
21 ERR IN THE REGULATIONS SUBSTANTIVE AND PROCED-
22 URAL ASPECT UNDER BOTH SANDIN V. CONNER, 515
23 U.S. 472, 483-84, 115 S.Ct 2293, 132 L.Ed. 2d. 418
24 (1995) (SUMMARIZING PROCEDURAL DUE PROCESS
25 CLAIMS BY PRISONERS) SEE MENDOZA V. BLODGETT,
26 960 F.3d 1425 (9th Cir. 1992) "THE PRISONER IS
27 ENTITLED TO NOTICE OF REASONS... AND AN OPPORTU-
NITY TO RESPOND IN WRITING. ALSO IN, FORBES

1 V. NAPOLITANO, 236 F.3d 1009 (9TH CIR. 2000) "UNDER
2 THE DUE PROCESS CLAUSE, A STATUTE WHICH CRIM-
3 INALIZES CONDUCT MAY NOT BE IMPERMISSI-
4 BLY VAGUE IN ANY OF ITS APPLICATIONS." THE
5 REGULATION IN QUESTION (SEE DEFENDANTS
6 ADENDUM.) IMPLIES A HEARING BY A JUVENILE
7 COURT, FOR CHILD VICTIMS. IT ALSO REFERS TO
8 AND WAS ULTIMATELY INTENDED FOR SEX OFFEN-
9 DERS. IN BOTH OF THESE INSTANCES I WAS AFFORD-
10 ED NO DUE PROCESS. SEE, CITY OF WEST COVINA
11 V. PERKINS, 525 U.S. 234, 142 L Ed 2d 636 119
12 S.Ct 678 (1999) "A PRIMARY PURPOSE OF THE NOTICE
13 REQUIRED BY THE DUE PROCESS CLAUSE IS TO ENSURE
14 THAT THE OPPORTUNITY FOR A HEARING IS MEAN-
15 INGFULL." I NEVER RECEIVED THE PROCESS DUE
16 IN EITHER CASE... NOT AT THE F.C.C REVIEW OR
17 WAS I ALLOWED JUDICIAL REVIEW IN THE
18 STATE COURTS, WHERE PARENTAL RIGHTS ARE
19 USUALLY REVIEWED AND DECIDED. THEN UNDER
20 NEAL V. SEMODA, 131 F.3d 818 (9TH CIR. 1997) "LABEL-
21 ING AS A 'SEX OFFENDER,' PRISONERS WHO HAVE
22 NEVER BEFORE BEEN CONVICTED OF A SEX OFFENSE
23 OR GIVEN THE OPPORTUNITY TO CHALLENGE THE
24 LABEL IN ADVERSARY PROCEEDINGS, VIOLATED
25 DUE PROCESS AND PRISONER WAS ENTITLED TO
26 RELIEF." NOW IN THE DISTRICT COURTS ORDER
27 DENYING THE DEFENDANTS MOTION TO DISMISS,
28 THEY DID SO PRIMARILY BECAUSE A RULE 12(b)(6)

1 MOTION TO DISMISS, IS NOT THE PROPER VEHICLE
2 TO "DEFINE DISPUTED FACTS" AND "DISPOSE OF
3 UNMERITORIOUS CLAIMS." IN DOING SO THE COURT
4 CITED. *S. WIERKIEWICZ V. SOREMA N.A.*, 534
5 U.S. 506, 512 (2002) FED. R. CIV. PRO. 8(a) ALSO
6 *JACKSON V. CAREY*, 353 F.3d 750, 755 (9TH CIR. 2003)
7 *AVSTIN V. TERHAUNE*, 367 F.3d 1167, 1171 (9TH CIR. 2004)
8 EVEN STILL THE DEFENDANTS CONTINUE TO
9 APPEAL ON THE SAME ISSUES, STATING I'VE
10 "ALLEGED NO FACTS SHOWING THAT A LIBERTY
11 INTEREST WAS AT STAKE." I DEMUR, AND WOULD
12 LIKE TO POINT TO THE RECORD IN THE DISTRICT
13 COURT, PLAINTIFFS OPPOSITIONS TO MOTION TO
14 DISMISS AND THE ORIGINAL COMPLAINT. IN
15 BOTH INSTANCES MY CLAIM WAS ALLOWED TO
16 PROCEED BECAUSE IT CLEARLY TOUCHES ON A
17 FUNDAMENTAL CIVIL RIGHT AND LIBERTY INTEREST.
18 AND FINALLY, EVEN THOUGH THIS COURT HAS NOT
19 RULED ON WHETHER INMATES HAVE A RIGHT TO
20 VISITATION WITH THEIR CHILDREN, IT HAS
21 RECOGNIZED IN THE PAST, THE PROCESS DUE
22 INCARCERATED HUMAN BEINGS. EVEN THE JUSTICES
23 STATED AS MUCH IN *OVERTON V. BAZZETTA*, 539
24 U.S. 126, 132 (2003) (^{THOMPSON} WESTLAW CASE CITE P. 7-8)
25 "WE AGREE THE RESTRICTION IS SEVERE. (A 2 YEAR
26 BAN ON VISITS FOR SUBSTANCE ABUSE VIOLATIONS)
27 AND IF FACED WITH EVIDENCE THAT THE
28 REGULATION IS TREATED AS A 'DE FACTO' PERMA-

1 WANT BAN ON ALL VISITATION FOR CERTAIN
2 INMATES, WE MIGHT REACH A DIFFERENT
3 CONCLUSION IN A CHALLENGE TO A PARTICULAR
4 APPLICATION OF THE REGULATION." THIS IS IN-
5 AFFECT WHAT THE DEFENDANTS DID UNDER THEIR
6 REGULATION CCR-15 3173.1 UNTIL THEY AMENDED
7 IT. (SEE ATTACHED EXHIBIT "A").

8 FOR THESE REASONS, THIS HONORABLE COURT
9 SHOULD AFFIRM THE DISTRICT COURT'S ORDER
10 AND DENY THE DEFENDANTS RECENT MOTION
11 TO DISMISS.
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1 IF.) ANSWER AND ASSERTIONS ON DEFENDANTS
2 CLAIM TO QUALIFIED IMMUNITY.
3

4 THE UNITED STATES DISTRICT COURTS, "FINDINGS
5 AND RECOMMENDATIONS TO DENY DEFENDANTS MOTION
6 TO DISMISS," BY THE HONORABLE U.S. MAGISTRATE JUDGE,
7 DENNIS L. BECK. AND ALSO THE "ORDER ADOPTING
8 FINDINGS AND RECOMMENDATION," "ORDER DENYING
9 MOTION TO DISMISS." BY THE HONORABLE U.S. DISTRICT
10 JUDGE, ANTHONY W. ISHII. (AER. 26-31 AND 22-25).
11 WERE SO EXACT IN THERE DETERMINATION DENYING
12 THE DEFENDANTS CLAIM TO QUALIFIED IMMUNITY.
13 THAT AS A PRO- PER PLAINTIFF, I SEE NO WAY, HOW,
14 OR REASON TO TRY TO SURPASS THEIR DECISION!
15 SO IN MY BEST EFFORT I'LL TRY TO PARALLEL THEIR
16 FINDINGS ON THIS ISSUE. AND OF COURSE LET,
17 WITH ALL DUE RESPECT TO THIS MOST HONORABLE
18 COURT, COME TO THE SAME CONCLUSION AND AFFIRM
19 THE DISTRICT COURTS RULING, DENYING THE
20 DEFENDANTS CLAIM TO QUALIFIED IMMUNITY.

21 IN THE DISTRICT COURTS FINDINGS, THEY FIRST
22 LOOKED TO ; HARLOW V. FITZGERALD, 457 U.S. 800,
23 818 (1982). "GOVERNMENT OFFICIALS ENJOY QUALIFIED
24 IMMUNITY FROM CIVIL DAMAGES, UNLESS THEIR
25 CONDUCT VIOLATES," CLEARLY ESTABLISHED STATUTORY
26 OR CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE
27 PERSON WOULD HAVE KNOWN." ALRIGHT NOW TAKING
28 HARLOW A STEP FURTHER, "IN ANALYZING A CLAIM

1 FOR QUALIFIED IMMUNITY, THEN, A COURT MUST DENY
2 THE CLAIM IF THE LAW IS CLEARLY ESTABLISHED,
3 "SINCE A REASONABLY COMPETENT PUBLIC OFFICIAL
4 SHOULD KNOW THE LAW GOVERNING HIS OR HER
5 CONDUCT" UNLESS HE/SHE CAN EITHER DEMONSTRATE
6 EXTRAORDINARY CIRCUMSTANCES OR THAT HE/SHE
7 "NEITHER KNEW NOR SHOULD HAVE KNOWN" ABOUT
8 THE LEGAL RIGHT IN QUESTION. ID AT 818-19, 102
9 S. CT. 2727. SEE ALSO; ALEXANDER V. PERRELL, 916 F.2d
10 1392, 1396 (9TH CIR. 1990). AS THE DISTRICT COURT
11 UNDERSTOOD FROM MY COMPLAINT; THIS CLAIM
12 IS NOT ABOUT A GENERAL VISITING RESTRICTION,
13 NO, ITS ABOUT THE DEFENDANTS "PERMANENT BAN"
14 ON ME VISITING WITH MY CHILDREN. WHICH BY
15 THEIR KNOWLEDGE INFRINGED ON MY PARENTAL
16 RIGHTS AND WORSE LABELED ME A SEX OFFENDER.
17 THIS ACTION WAS PRIMARILY BASED ON A RULE
18 VIOLATION THAT WAS (2) YEARS OLD "FOR ATTEMPT-
19 ING TO ELICIT ILLEGAL SEXUAL RELATIONS
20 BY PHONE, IN CONCERT WITH A MINOR." THE
21 REGULATION CCP. 15 § 3173.1, REFERS TO PENAL CODE,
22 WELFARE AND INSTITUTIONS CODE, AND OTHER
23 AUTHORITIES TO WHICH HELP "ANY REASONABLY COMPETENT
24 PUBLIC OFFICIAL KNOW THE LAW GOVERNING HIS/HER
25 CONDUCT." MALEY V. BRIGGS, 475 U.S. 335, 341 106 S. CT.
26 1092, 89 L. ED. 2d 271 (1986) "OBSERVING THAT 'ALL BUT
27 THE PLAINLY INCOMPETENT OR THOSE WHO KNOWINGLY
VIOLATE THE LAW" ARE PROTECTED BY QUALIFIED
12.

1 IMMUNITY."

2 IN DETERMINING WHETHER THE DEFENDANTS
3 VIOLATED A "CLEARLY ESTABLISHED RIGHT," THE
4 DISTRICT COURT RELIED ON THE SUPREME COURT'S
5 THREE PART ANALYSIS IN SAUCIER V. KATZ, 533
6 U.S. 194, 201 (2001). GRANTING FIRST, MY DUE PROCESS
7 WAS VIOLATED BY THE DEFENDANTS WHEN THEY
8 INFRINGED UPON MY RELATIONSHIP WITH MY
9 CHILDREN AND ULTIMATELY CREATING A LIBERTY
10 INTEREST WHEN THEY BANNED VISITATION
11 WITH MY CHILDREN AND THUS INFRINGING ON MY
12 CONSTITUTIONAL PARENTAL RIGHTS. SEE; P.O.P.S
13 V. GARDNER, 998 F.2d 794 (9TH CIR. 1993). "RIGHT TO
14 MARRY, HAVE CHILDREN, AND MAINTAIN RELATION-
15 SHIP WITH CHILDREN ARE FUNDAMENTAL RIGHTS
16 PROTECTED BY THE 14TH AMENDMENT, AND THUS, STRICT
17 SCRUTINY IS REQUIRED OF ANY STATUTES THAT DIRECTLY
18 AND SUBSTANTIALLY IMPAIR THOSE RIGHTS." ALSO;
19 NUÑEZ BY NUÑEZ V. CITY OF SAN DIEGO, 114 F.3d 935
20 (9TH CIR. 1997). AND FINALLY AS THE U.S. SUPREME
21 REMARKED IN; M.L.B. V. S.L.J., 519 U.S. 102, 117 S. CT 558,
22 136 L. Ed. 2d 473 (1996) "CHOICES ABOUT MARRIAGE,
23 FAMILY LIFE, AND THE UPBRINGING OF CHILDREN
24 ARE AMONG ASSOCIATIONAL RIGHTS THIS COURT
25 HAS RANKED AS OF BASIC IMPORTANCE IN OUR
26 SOCIETY, RIGHTS SHELTERED BY THE FOURTEENTH
27 AMENDMENT AGAINST THE STATE'S UNWARRANTED
USURPATION, DISREGARD, OR DISRESPECT."

1 AGAIN THE DEFENDANTS CLAIM THAT I DID
2 NOT ALLEGED FACTS IMPLICATING A LIBERTY
3 INTEREST THUS THEY DID NOT VIOLATE MY DUE
4 PROCESS OR ANY CLEARLY ESTABLISHED LAW.
5 HERE I CAN ONLY REFER TO THE COMPLAINT. (AER
6 43-44, THEN AGAIN IN EVERY CLAIM AFTERWARD AND
7 UP UNTIL 46-47.) AND THE FACT THAT THE DISTRICT
8 COURT FIRST, RECOGNIZED A SINGLE CLAIM COGNIZ-
9 ABLE FOR RELIEF FOR DUE PROCESS (AER 32-33.).
10 SEE; BAKER V. MCOLLAN, 443 U.S. 137, 144 N. 3, 99 S. CT.
11 2689, 61 L. ED. 2D 433 (1979) "THE FIRST ENQUIRY IN
12 ANY 1983 SUIT IS WHETHER THE PLAINTIFF HAS BEEN
13 DEPRIVED OF A RIGHT "SECURED BY THE CONSTITUTION
14 AND LAWS". SEE E.G. CONN V. GABBERT, 526 U.S. 286
15 2010, 119 S. CT 1292, 143 L. ED. 2D 399 (1999); COUNTY OF
16 SACRAMENTO V. LEWIS, 523 U.S. 833, 841 N. 5, 118
17 S. CT. 1708, 140 L. ED. 2D 1043 (1998). THEN THE COURT
18 AGAIN RECOGNIZED MY CLAIM IN THEIR SECOND
19 STEP, GRANTING, THAT THE RIGHT WAS CLEARLY
20 ESTABLISHED. (AER, 30). "ESTABLISHING A PARENTS
21 FUNDAMENTAL INTEREST IN THE COMPANIONSHIP,
22 SOCIETY OF HIS CHILDREN, AND THE STATES
23 INTERFERENCE WITH THAT LIBERTY INTEREST
24 WITHOUT DUE PROCESS OF LAW IS REMEDIABLE
25 UNDER 31983: LEE V. COUNTY OF LOS ANGELES, 240
26 F.3D 754 (9TH CIR. 2001). SEE ALSO; CAMPBELL V. BURT,
27 141 F.3D 927 (9TH CIR. 1998). "REGULAR AND APPROPRIATE
VISITS BETWEEN PARENT AND CHILDREN, AND

1 CHILDREN AND PARENTS." AND IN; *TROXEL V. GRANVILLE*
2 170 S. CT. 2054, 147 L. ED. 2d 49 (2000) "THE COURT...
3 RELATING TO THE TERMINATION OF PARENTAL RIGHTS
4 WERE INVALID AS CONSTITUTING DENIAL OF SUB-
5 STANTIVE DUE PROCESS TO THE EXTENT THAT THEY
6 ALLOWED SUCH TERMINATIONS WITHOUT SHOWING
7 OF 'HIGH AND SUBSTANTIAL DEGREE OF HARM TO
8 CHILDREN,' AS PREREQUISITE TO TERMINATION."
9 THIS CASE ALSO REITERATED TO THE COURT THAT
10 THE PARENTAL INTEREST IN "THE CARE, CUSTODY,
11 AND CONTROL OF THEIR CHILDREN" IS "PERHAPS
12 THE OLDEST OF THE FUNDAMENTAL LIBERTY INTE-
13 RESTS RECOGNIZED BY THE SUPREME COURT." ID.
14 AT 2059. REAFFIRMING THE VALIDITY OF SUCH
15 LONG STANDING PRECEDENTS AS *MEYER V. NEBRASKA*,
16 262 U.S. 390, 401, 43 S. CT 625, 67 L. ED. 1042 (1923).

17 WHILE THE DISTRICT COURT CLEARLY STATED
18 THAT THE DEFENDANTS MOTION TO DISMISS IS
19 NOT THE PROPER VEHICLE TO DEFINE DISPUTED
20 FACTS AND DISPOSE OF UNMERITORIOUS CLAIMS,
21 IN ITS ORDER DENYING THE DEFENDANTS RULE 12
22 (b)(6) MOTION TO DISMISS, THE DEFENDANTS STILL
23 CLAIM THEY WERE "REASONABLE" IN THEIR PLACE-
24 MENT OF THE "TOTAL BAN" PERMANENTLY RESTRICT-
25 ING ME VISITING WITH MY CHILDREN. THE
26 HONORABLE DISTRICT COURT USED THE "REASONABLE-
27 NESS" TEST SET FORTH IN *TURNER V. SAFELY*, 482
28 U.S. 78, 89-91 (1987). NOW WHILE THE FACTS HAVEN'T

1 BEEN COMPLETELY LAYED OUT. IT'S CLEAR THE
2 DEFENDANTS WERE NOT REASONABLE IN THEIR
3 APPLICATION OF THE BAN RESTRICTING VISITS
4 WITH MINORS. THIS WAS MADE APPARENT BY
5 DEFENDANT T. SURGES IN HIS DENIAL OF THE
6 THE INMATE APPEAL AT THE FINAL LEVEL. (SEE
7 EXHIBIT "C"). ALSO THE DEFENDANTS REASONABLY
8 SOUGHT REVIEW OF THE APPLICATION OF C.R. 15
9 3173.1, VISITING RESTRICTIONS WITH MINORS,
10 BEFORE THEY APPLIED IT TO ME AT THE I.C.C.
11 REVIEW. (SEE EXHIBIT "B"). IN SCHWENK V.
12 HARTFORD, 204 F.3d 1187 (9TH CIR. 2000): "OFFICIALS
13 CLAIM OF QUALIFIED IMMUNITY WILL BE DEFEATED
14 IF, IN THE LIGHT OF PRE-EXISTING KNOWLEDGE, LAW
15 THE UNLAWFULNESS OF THEIR CONDUCT WAS
16 APPARENT."

17 THUS THE DEFENDANTS CLAIM TO QUALIFIED
18 IMMUNITY IS "UNREASONABLE" BECAUSE THEY
19 SO KNOWINGLY KNEW THAT THE "PERMANENT BAN"
20 RESTRICTING VISITING WITH MY CHILDREN,
21 WOULD BE QUESTIONABLE UNDER LAW AND ULTIMATELY
22 INFERENCE ON MY PARENTAL RIGHTS.

23 THEREFORE THE DISTRICTS COURTS DECISION
24 DENYING THE DEFENDANTS QUALIFIED IMMUN-
25 NITY SHOULD STAND AFFIRMED. AND THE
26 DEFENDANTS MADE TO ANSWER TO THE FACTS
27 IN THIS CASE.

CONCLUSION

"A PRISONER IS NOT WHOLLY STRIPPED OF CONSTITUTIONAL PROTECTIONS WHEN HE IS IMPRISONED FOR A CRIME. THERE IS NO IRON CURTAIN DRAWN BETWEEN THE CONSTITUTION AND THE PRISONS OF THIS COUNTRY." (WOLF V. McDONNELL (1974)). THE DEFENDANTS HERE IN MY CASE, CLAIM OTHERWISE, THAT AS PRISON OFFICIALS, THEY HAVE THE RIGHT TO DEFINE THE FAMILIAR RELATIONSHIP BETWEEN PARENTS AND CHILDREN. BECAUSE AS PRISON INMATES WE'RE ALREADY LIMITED IN THAT CAPACITY, SO AS THE DEFENDANTS REPEATED NUMEROUS TIMES THROUGHOUT THEIR BRIEF, WHOSES THE LIBERTY INTEREST FOR PRISONERS? THE LIBERTY INTEREST HAS BEEN "WELL ESTABLISHED" TO PARENTS AND CHILDREN ALIKE. JUSTICE O'CONNER STATED IN TROXEL V. GRANVILLE (2000). "SO LONG AS A PARENT ADEQUATELY CARES FOR HIS OR HER CHILDREN, THERE WILL NORMALLY BE NO REASON FOR THE STATE TO INJECT ITSELF INTO THE PRIVATE REALM OF THE FAMILY TO FURTHER QUESTION THE ABILITY OF THAT PARENT TO MAKE THE BEST DECISIONS CONCERNING THE REARING OF THAT PARENTS CHILDREN." BY THE DEFENDANTS, PERMANENTLY BANNING ME FROM VISITING WITH MY CHILDREN (MINORS) UNDER A REGVLATION USED FOR SEX OFFENDERS, ETC.

1 ALSO A REGULATION THAT REQUIRES A "COURTS"
2 DETERMINATION. THEY BASICALLY BECAME THE
3 DEPARTMENT OF SOCIAL SERVICES AND THE COURT,
4 AND IN THE FORM OF AN INSTITUTIONAL CLASSIF-
5ICATION COMMITTEE REVIEW TERMINATED MY
6 PARENTAL RIGHTS, FOR A TWO YEAR OLD DISCIP-
7 LINARY VIOLATION THAT WAS ADJUDICATED TO
8 THE FULLEST EXTENT OF THE PRISON'S ABILITY.
9 EVEN THEN AT THE TIME OF THE RULE VIOLATION
10 NO ACTION WAS TAKEN TO TERMINATE MY VISITS.

11 AS TO WHETHER THE DEFENDANTS WOULD HAVE
12 KNOWN... WELL, COMMON SENSE IS ENOUGH TO KNOW
13 THAT A FAMILIAR BOND BETWEEN PARENT AND CHILD,
14 OR CHILDREN AND PARENTS IS BASIC HUMAN NATURE.
15 EVEN ORPHANS ARE AFFECTED BY THE SENSE OF THESE
16 BONDS, WHEN THEY SEARCH FOR AND TRY TO REUNITE
17 WITH THERE PARENTS. ITS PROBABLY INGRAINED IN
18 OUR D.N.A. BUT ONE THING THAT IS COMMON, IS WHEN
19 A PARENTS CHILD(REN) IS THREATENED OR IN JEOPARDY,
20 OUR PARENTAL INSTINCT IS TO PROTECT THEM. SO
21 ACCORDINGLY, A REASONABLY COMPETENT PUBLIC
22 OFFICIAL WOULD HAVE KNOWN THAT THE ALLEGED
23 CONDUCT VIOLATED A WELL ESTABLISHED DUE
24 PROCESS PROTECTED LIBERTY INTEREST.

25 FOR THESE REASONS AND MORE, THIS HONORABLE
26 COURT SHOULD UPHOLD AND AFFIRM THE DISTRICT
27 COURTS DECISION TO DENY THE DEFENDANTS MOTION
40 TO DISMISS.

SINCERELY AND RESPECTFULLY
SUBMITTED,

18.

DYLAN DVNN

ADDENDUM

(Cal. Code. Regs. tit. 15, §3173.1 (2003))

Westlaw

15 CA ADC § 3173.1

15 CCR § 3173.1

Cal. Admin. Code tit. 15, § 3173.1

Page 1

**BARCLAYS OFFICIAL CALIFORNIA CODE OF
REGULATIONS
TITLE 15. CRIME PREVENTION AND CORREC-
TIONS
DIVISION 3. DEPARTMENT OF CORRECTIONS
CHAPTER 1. RULES AND REGULATIONS OF
THE DIRECTOR OF CORRECTIONS
SUBCHAPTER 2. INMATE RESOURCES
ARTICLE 7. VISITING**

This database is current through 12/26/2003, Register
2003, No. 52.

§ 3173.1. Visiting Restrictions with Minors.

Visiting with minors shall be prohibited for any inmate sentenced to prison for violating Penal Code section(s) 261, 264.1, 266c, 273d, 285, 286, 288, 288a, 288.5, or 289 unless specifically authorized by a juvenile court.

pursuant to Welfare and Institutions Code section 362.6. Inmates may be prohibited from having contact or non-contact visits where substantial evidence (e.g., court transcripts, police or probation officer reports or parole revocation hearing findings describing the misconduct) of the misconduct described in section 3177(b)(1) exists, with or without a criminal conviction.

<General Materials (GM) - References, Annotations, or
Tables>

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; and Section 362.6, Welfare and Institutions Code.

HISTORY

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

15 CA ADC § 3173.1

END OF DOCUMENT

Exhibit

TITLE 15**DEPARTMENT OF CORRECTIONS AND REHABILITATION****§ 3173.2**

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600 and 5054, penal code. *In re French*, 164 Cal.Rptr. 800 (1980).

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3173. Processing of Approved Visitors.

(a) Approved visitors shall complete a visitor pass upon their arrival at the institution/facility visitor processing center and their approval to visit shall be verified.

(b) All adult visitors shall present picture identification before being permitted to visit. For each minor, a certified record of birth (official birth certificate, or county embossed abstract of birth) shall be presented during each visit.

(c) Acceptable proof of picture identification for visitors may be, but is not restricted to, the following valid documents:

- (1) Driver's license with picture,
 - (2) Department of Motor Vehicles identification card with picture,
 - (3) Picture passport,
 - (4) Armed forces identification card with picture,
 - (5) Picture identification cards issued by the United States Department of Justice—Immigration and Naturalization Service, or
 - (6) Picture identification issued by the Mexican Consulate.
- (d) Minors may be allowed to visit an inmate subject to the restrictions of section 3173.1. If the accompanying adult is not the parent or legal guardian of the minor, a notarized written consent shall be required from a person with legal custody of the minor, authorizing the minor to visit while accompanied by a designated adult.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 4570.5 and 5054, Penal Code.

HISTORY:

1. Amendment of subsections (h) and (p) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34). For prior history, see 78, No. 33, 78, No. 30; 78, No. 12; 77, No. 40; 77, No. 20, and 77, No. 9.
2. Amendment of subsection (m) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
3. Amendment of subsections (b), (g) and (k) filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
4. Amendment of subsection (f) filed 8-27-82; effective thirtieth day thereafter (Register 82, No. 35).
5. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).
6. Editorial correction of printing errors in subsections (f), (g) and (h) (Register 92, No. 5).
7. New subsections (p) and (q) filed 2-11-98 as an emergency; operative 2-11-98 (Register 98, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2-11-98 order transmitted to OAL 5-4-98 and filed 6-16-98 (Register 98, No. 25).
9. Change without regulatory effect amending subsection (f) filed 12-18-98 pursuant to section 100, Title 1, California Code of Regulations (Register 98, No. 51).
10. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
11. Change without regulatory effect amending Note filed 5-22-2003 pursuant to section 100, Title 1, California Code of Regulations (Register 2003, No. 21).

3173.1. Visiting Restrictions with Minors.

(a) For inmates convicted of Penal Code (PC) Section(s) 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, visitation with the minor victim shall be prohibited, except as authorized by an order of the juvenile court pursuant to

Welfare and Institutions Code Section 362.6. Visitation pursuant to such an order shall be limited to non-contact status.

(b) For inmates convicted of PC Section(s) 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, visitation with any minor who is not the victim of the crime shall be limited to non-contact status.

(c) For inmates convicted of PC Section(s) 269, 273a, 273ab, or 273d, visitation with the minor victim shall be limited to non-contact status.

(d) For inmates convicted of violating PC Section(s) 187, 269, 273a, 273ab, or 273d, when the victim is a minor, visitation with any other minor shall be limited to non-contact status except as authorized by the Institution Classification Committee.

(e) When an inmate has been arrested, but not convicted, of any crime involving a minor victim included in this Section, a classification committee shall determine whether all visitation with a minor(s) is to be limited to non-contact status.

Unless otherwise prohibited, the inmate's visiting status shall be unrestricted until a classification committee has done the following:

(1) Made a case-by-case determination whether the inmate poses a threat of harm to minor visitors in contact visitation.

(2) Considered the circumstances of the misconduct involving a minor victim in determining whether the inmate poses a threat of harm to minor visitors in contact visitation. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

(f) If a classification committee, when making a decision regarding the visiting status of an inmate described in (e) above, determines that the inmate will pose a threat of harm to minor visitors in contact visitation, it will order all the inmate's visitation with minors be restricted to non-contact visiting status.

(g) If an inmate disagrees with the decision of a classification committee, the inmate may file an inmate grievance via the CDC Form 602 appeal process as outlined in sections 3084.1 through 3085.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; and Section 362.6, Welfare and Institutions Code.

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Repealer and new section and amendment of Note filed 12-5-2005 as an emergency; operative 12-5-2005 (Register 2005, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-15-2006 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-5-2005 order, including amendment of subsections (f) and (g), transmitted to OAL 4-24-2006 and filed 6-6-2006 (Register 2006, No. 23).

3173.2. Searches and Inspections.

(a) Any person coming onto the property of an institution/facility shall be subject to inspection as necessary to ensure institution/facility security including prevention of the introduction of contraband. Inspections may include a search of the visitor's person, personal property and vehicle(s) when there is reasonable suspicion to believe the visitor is attempting to introduce or remove contraband or unauthorized items or substances into, or out of, the institution/facility.

(b) Visitors shall not be forcibly searched unless institution/facility officials possess a court issued warrant to conduct the search, or are being detained for unlawful actions or activities in accordance with section 3292.

(c) Visitors shall be required to submit to contraband and/or metal detection device(s), and a thorough search of all personal

Exhibit

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

CDC 128G(2/69)

NO	H93331	NAME	DUNN, DYLAN	BLD	4B1L-61	CUST	MAX	WG/PG	D1D
MERD	ASU	REL. DT.	EPRD: 7/13/19		LEVEL IV	ETH	WHI		
CS:	101	READING LEVEL:	6.1						

ACTION: PROGRAM REVIEW. D/C status, W/A Yard. Release to COR-IV (EOP) based upon dismissal of RVR dtd 9/3/03, AND REDUCAL OF RVR DTD 9/26/03.

Inmate DUNN made a personal appearance before IV-B ASU ICC on today's date for "S" PROGRAM REVIEW. "S" was provided 72 hours advance notification. "S" stated he was in good health and ready to proceed. "S" was initially placed into Administrative Segregation on 9/3/02 at CSP-COR for the specific act of Possession of a Weapon. This RVR was later dismissed. During Ad-Seg confinement, "S" rec'd an RVR dtd 9/26/03 for Battery on I/M. This RVR was later reduced to Mutual Combat.

COMMITTEE ACTION: ICC elects to release back to COR-IV (EOP) based upon dismissal of RVR dated 9/3/03. ICC further elects to permanently restrict visiting with minors pursuant to 3173.1 (contact and non-contact). "S" was found guilty of RVR dtd 5/7/02 for Attempting to Elicit Illegal Sexual Relations by Phone in Concert w/ Minor. ICC's decision is based upon the findings of guilty for RVR dtd 5/7/02, which articulates substantial evidence relating to harm/abuse, and exploitation of a minor. Therefore ICC has good cause finding to restrict visiting in order to protect future children from exploitation/harm and/or abuse. Case conferred with Tim Roucheaux, CSU.

CONFIDENTIAL FILE reviewed and noted.

CELL/YARD REVIEW: Committee elects to continue "S" on D/C status based on compatible cellmate, W/A Yard based on CSP-COR's SHU standard yard. There is no History of in-cell violence. There is History of Assaultive Behavior.

MENTAL HEALTH: "S" is a participant in the MHSDS Program. *"Inmate DUNN, H-93331, currently is a participant in the MHSDS at the EOP Level of Care. "S" has a history of suicide ideation/gesture. "S" currently is prescribed psychotropic medication and is medication compliant. His Activities of Daily Living (ADL) are adequate. "S's" interactions with staff appear to be appropriate. His placement in alternative Levels of Care in the Mental Health Services Delivery System was considered and is not recommended."*

Present and assigned as staff assistant is C/O G. Vanderbloom.

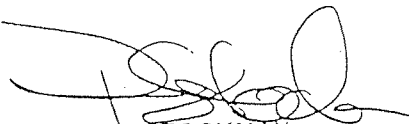
INMATE'S COMMENTS/PARTICIPATION: "S" disagreed with Comm.'s decision and appeal rights were explained. "S" does not have a cellmate at this time.

"S" next classification will occur on 2/04 for ASU Review.

C:ke



J. ORTIZ
Chairperson/CDW(A)
DATE: 1/29/04



P. STOCKMAN
CCII/RECORDER
FACILITY IV-B ICC



J. CASTRO
CCU
CLASSIFICATION

T. BLANCHARD
PhD./MHSDS
INST: CSP-CORCORAN

NUMBER Duran H93331

CDC 1288

X The above Inmate is being restricted from visiting with minor children based on CCR 3173.1

The above Inmate is "temporarily" restricted from visiting with minor children based on CCR 3173.1

notified by telephone on 1/29/04
DATE

J. Castro, CCT

Name and title of staff member completing chrono

J. Castro, CCT

Signature of staff member completing chrono

file (Original)

Lieutenant

CSP-CORCORAN
VISITING RESTRICTION

GENERAL CHRONO

29/04

STATE OF CALIF

NAME and NL

I/M Dur
WRAT score
participating in
EOP IDT conti

Orig.: Central
cc Ed. File
CCM: M.
EOP Supe
Inmate: D

TE 12 May, 20

25

26

27

28

Exhibit

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: **JUL 28 2005**

In re: Dunn, Dylan, H-93331
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

IAB Case No.: 0407473

Local Log No.: COR 04-2596

This matter was reviewed on behalf of the Director of the California Department of Corrections (CDC) by Appeals Examiner Thomas H. Emigh, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that he was wrongly denied access to family visits by Institution Classification Committee (ICC). The institution has since reversed its position regarding family visits and they have been restored. Pursuant to completing this Third Level of Review, the appellant was interviewed on Wednesday July 6, 2005. At that time he was asked what action he was requesting because his visits had been restored since the time he submitted his appeal for Third Level Review. The appellant now states he is simply attempting to exhaust administrative remedies pursuant to taking the matter to court where he will seek damages. *SEE 602 ATTACHMENTS*

II SECOND LEVEL'S DECISION: The reviewer found that the appellant was restricted from visiting with his children due to the receipt of a disciplinary charging him with Attempting to Elicit Illegal Sexual Relations by Phone in Concert W/Minor. However, since he was not formally arrested or charged with any of the offenses listed in California Code of Regulations Section 3173.1 ICC reversed its former decision and directed that his visiting privileges be restored.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

SEE MEDICAL RECORDS OCT. 2003 JAN. 2004

A. FINDINGS: Upon review of the documentation submitted, a determination has been made that the appellant's allegation that he suffered harm as a result of staff's willful misapplication of the rules, is not supported by the evidence. In the Institution Classification Committee (ICC)'s chrono which denied the appellant visits with his children it was noted: "ICC's decision is based upon the finding of guilty for CDC Form 115, Rules Violation Report dated 5/7/02 which articulates substantial evidence relating to harm/abuse, and exploitation of a minor. Therefore, ICC has good cause to restrict visiting in order to protect future children from exploitation/harm and/or abuse." The situation was reviewed with Tim Rougeux, of the Institutions Services Decision prior to making the determination. California Code of Regulations, Title 15, Section (CCR) Section 3270 states: "The primary objectives of the correctional institutions are to protect the public by safely keeping persons committed to the custody of the Director of Corrections." In their action, the members of ICC identified a safety concern and took what they thought to be the appropriate steps to minimize that concern. The action was taken on January 29, 2004 and visits were restored on February 18, 2005. While the citation of CCR Section 3173.1 was not the appropriate vehicle to support the committee action, the action itself could as easily have been supported by initiating an investigation into a possible conspiracy to circumvent visiting rules using minors, causing the minor visitor's right to visit to be suspended pending the outcome of that investigation. The immediate effect would have been the same, and the outcome would likely have been the same, only the process would have been more appropriate in light of current regulations. For that reason there is no evidence that either the appellant or his family suffered needless harm from the actions of ICC and there is evidence that ICC had both reason and obligation to ensure the safety of the minor before allowing future visits to occur. *← (ANSWERS LATER) WHEREAS THE*

JAN 29, 04

90 DAY INVESTIGATION

B. BASIS FOR THE DECISION:

CCR: 3004, 3170, 3170.1, 3175, 3176.1

EVIDENCE

DUNN, DYLAN, H-93331

CASE NO. 0407473

PAGE 2

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDC. If dissatisfied, the appellant may forward this issue to the California Victims Compensation and Government Claims Board, (formerly known as the State Board of Control), Government Claims Unit, P.O. Box 3035, Sacramento, CA 95812-3035, for further review.

T. Surges
4

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SVSP
Appeals Coordinator, SVSP
Appeals Coordinator, COR

SOME (2) YEARS LATER
WASPE'S THE JUSTICE ON
THAT & I LOST CONTACT WITH
MY KIDS FOR 1 1/2 YEARS
AFTER THE FACT.

JAN 25 2010

PROOF OF SERVICE

FILED _____
DOCKETED _____
DATE _____ INITIAL _____

(C.C.P. §2015.5; 28 U.S.C. §1745)

I, DYLAN DUNN, am over the age of eighteen (18) years,
and I (am) (am not) a party to the within cause of action. My address is:

K.V.S.P/A-2 #128
P.O. BOX-5701
DELANO, CA. 93216

On, JAN. 4, TH, 2010, I served the following documents:

APPELLEES ANSWERING BRIEF

_____ on the
below named individuals by depositing true and correct copies thereof in the United
State mail in DELANO California, with postage fully prepaid thereon, addressed as
follows:

1. CLERK, U.S. COURT
OF APPEALS FOR THE
NINTH CIRCUIT
P.O. BOX-193939
SAN FRANCISCO, CA. 94119-

3939

DEPT. OF JUSTICE
2. ATTORNEY GENERAL
- J. CASTRO, ET AL., -
ANTHONY P. O'BRIEN
P.O. BOX-944255

SACRAMENTO, CA. 94244-255

I have read the above statements and declare under the penalty of perjury of
the laws of the State of California that the foregoing is true and correct.

Executed this 4TH day of JAN, 2010, at California
State Prison at K.V.S.P. DELANO California.

(Signature)

Declarant